

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
LEE OIL COMPANY, INC.)	
)	CASE NO. UST18-0079
RESPONDENT)	FACILITY: LEE'S FOOD MART NO. 2

SETTLEMENT AGREEMENT AND ORDER

On September 18, 2018, an Order and Assessment was issued to Lee Oil Company, Inc. ("Respondent"). The Respondent filed a timely appeal of the Orders and Assessment on November 13, 2018. Pursuant to Tennessee Code Annotated (Tenn. Code Ann.) §§ 4-5-105 and 68-215-119 the Commissioner and the Respondent have reached a settlement. To implement this settlement, (1) the Commissioner has agreed to and hereby does dismiss the September 18, 2018 Order and Assessment, and (2) the Respondent has agreed and hereby does waive the Respondent's right to a contested case hearing before the Board in this matter and also withdraws its appeal of the September 18, 2018 Order and Assessment. This Settlement Agreement and Order resolves and supersedes the September 18, 2018 Order and Assessment. The Parties now stipulate and agree to the following:

PARTIES

I.

David W. Salyers, P.E. is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("Department") and, among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to 68-215-129. Stanley R. Boyd is the duly appointed Director ("Director") of the Underground Storage Tank Division ("Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

II.

The Respondent is a corporation created in the State of Virginia and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of five (5) underground

storage tank ("UST") systems located at 7060 Cumberland Gap Parkway, Harrogate, Tennessee 37752 ("Subject Property"). Service of process may be made on the Respondent's Registered Agent, Terry L. Lee, at 328 Presidential Boulevard, Harrogate, Tennessee 37752.

JURISDICTION

III.

When the Commissioner finds upon investigation that any provision of the Act is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, the Commissioner may issue an order for correction to the responsible party, and this order shall be complied with within the time limit specified in the order. Tenn. Code Ann. § 68-215-114. If this order becomes final, the Commissioner may red tag the facility fill ports and/or dispensers and give notice on the Department's website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Further, the Commissioner is authorized to assess civil penalties against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. Rules governing underground storage tanks have been promulgated pursuant to Tenn. Code Ann. section 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 ("Rules").

IV.

The Respondent is a "person" within the meaning of Tenn. Code Ann. § 68-215-103(11).

FACTS

V.

On or about July 26, 2010, the Division received a Notification for Underground Storage Tanks form, signed by Gary Lee, the Respondent's Vice President. In the notification form, Mr. Lee listed the Respondent as the owner of the five (5) UST systems located at the Subject Property. The facility ID number is 2-130053 ("Subject Facility").

VI.

On or about October 5, 2017, Division personnel contacted Mike Hampton with the Respondent by phone and scheduled a compliance inspection to be conducted on November 15, 2017. On or about November 7, 2017, Division personnel sent a letter confirming the inspection date.

VII.

On or about November 15, 2017, Division personnel performed a compliance inspection at the Subject Facility. The inspector discovered the following violations:

- Violation #1: Failure to provide release detection method capable of detecting a release from tank that routinely contains product in accordance with Rule 0400-18-01-.04(1)(a)1. Specifically, at the time of the inspection, statistical inventory reconciliation ("SIR") was being performed improperly.
- Violation #2: Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping in accordance with 0400-18-01-.04(2)(b)1(ii). Specifically, at the time of the inspection, SIR was being performed improperly at the facility.
- Violation #3: Failure to do monthly monitoring or conduct a line tightness test every three years on suction piping, if appropriate, in accordance with Rule 0400-18-01-.04(2)(b)2. Specifically, at the time of the inspection, verification that the piping associated with Tank 4 (4,000 gallon Diesel) and Tank 5 (2,000 gallon Kerosene) was European Suction was unavailable for review.

VIII.

On or about December 22, 2017, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by January 23, 2018, to document correction of the violations. U.S. Postal Service tracking records delivery on January 4, 2018.

IX.

On or about February 5, 2018, Division personnel sent a Results of Compliance-No Response Received certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by February 21, 2018, to document correction of the violations. U.S. Postal Service tracking records delivery on February 13, 2018.

X.

On or about March 2, 2018, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance. U.S. Postal Service tracking records that the letter was unclaimed.

XI.

On or about March 15, 2018, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by April 16, 2018, to document correction of the violations. U.S Postal Service tracking records the letter was returned as "unable to forward."

XII.

On or about April 25, 2018, Division personnel again sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by May 25, 2018, to document correction of the violations. U.S Postal Service tracking records the letter was returned as "unclaimed."

XIII.

On or about May 22, 2018, Division personnel sent a Notice of Violation letter by private process server. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by May 25, 2018, to document correction of the violations. The affidavit of process server verifies delivery date on May 22, 2018.

XIV.

When the Respondent failed to meet the May 25, 2018 deadline, the following violation was added:

Violation #4: Failure to cooperate with the Division by failing to provide documents, testing, or monitoring records in accordance with Rule 0400-18-01-.03(2).

XV.

After the September 18, 2018 Order and Assessment was issued, the Respondent submitted documentation sufficiently demonstrating compliance and/or that the aforementioned violation had been addressed.

VIOLATIONS

XVI.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. § 68-215-104(2), which states:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto;

XVII.

By failing to provide release detection method capable of detecting a release from tank that routinely contains product, the Respondent has violated Rule 0400-18-01-.04(1)(a)1, which states:

0400-18-01-.04 RELEASE DETECTION.

- (1) General requirements for release detection.
 - (a) Owners and/or operators of UST systems shall provide a method or combination of methods, of release detection that:
 - 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;

XVIII.

By failing to conduct annual line tightness test or do monthly monitoring on pressurized underground piping, the Respondent has violated Rule 0400-18-01-.04(2)(b)1(ii), which states:

0400-18-01-.04 RELEASE DETECTION

(2) Requirements for petroleum UST systems.

(b) Piping.

1. Pressurized Piping.

Underground piping that conveys petroleum under pressure shall:

- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

XIX.

By failing to do monthly monitoring or conduct a line tightness test every three years on suction piping, if appropriate, the Respondent has violated Rule 0400-18-01-.04(2)(b)2, which states:

0400-18-01-.04 RELEASE DETECTION

(2) Requirements for petroleum UST systems.

(b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

2. Suction Piping.

Underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every three (3) years and in accordance with subparagraph (4)(b) of this rule, or use a monthly monitoring method conducted in accordance with

XX.

By failing to cooperate with the Division by failing to provide documents, testing, or monitoring records to the Division, the Respondent has violated Rule 0400-18-01-.03(2), which states:

0400-18-01-.03 Notification, Reporting and Record Keeping.

(2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. §68-215-101 et seq.

SETTLEMENT TERMS AND ORDER

VIII.

WHEREFORE, PREMISES CONSIDERED, the Director of the Division of Underground Storage Tanks orders and the Respondents agrees that:

1. The UST systems at Subject Property may be inspected by the Division any time within a one (1) year period commencing on March 1, 2020, and terminating on February 28, 2021. During this one (1) year period, the Respondent shall not have a Notice of Violation addressing an Automatic Enforcement Violation. See list of Automatic Enforcement Violations set forth herein.
2. The Respondent shall be responsible for paying a TOTAL CIVIL PENALTY in the amount of \$31,200, which represents the entire assessed civil penalty set forth in the September 18, 2018 Order and Assessment as follows:
 - a. The Respondent shall pay \$13,200 such that it is received by the Department within five (5) business days of the effective date of this Settlement Agreement and Order. TIME IS OF THE ESSENCE.
 - b. If the Respondent remains in significant operational compliance and not have any of the listed Automatic Enforcement Violation over the aforementioned one (1) year period, the Division will discount the civil penalty and accept the payment provided for in the preceding subparagraph 2.a. as full satisfaction of the September 18, 2018 Order and Assessment.
 - c. If the Respondent fails to remain in significant operational compliance and has an Automatic Enforcement Violation over the aforementioned one (1) year period, the Respondent shall immediately pay any unpaid balance of the TOTAL CIVIL PENALTY of \$31,200.
 - d. All payments provided for herein must be made to the "Treasurer, State of Tennessee" and

sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, "UST18-0079" must be clearly shown on the check or money order to ensure that the payment is properly credited.

3. Respondent agrees that at least one of its representatives shall attend the Tennessee Department of Environment and Conservation's "Tank School" within 120 days of Respondent's execution of this Agreement.
4. This Settlement Agreement is an integrated contract and all prior negotiations are merged into this document. No promise, offer, inducement, or representation not set out in this Settlement Agreement and Order forms any part of the Parties' agreement. This Settlement Agreement and Order is the product of the Parties' joint efforts, and for purposes of applying any rule of construction, the Parties shall be deemed to have participated equally in the drafting of this Settlement Agreement and Order.
5. The Parties each have had the opportunity to, and have consulted with, their respective counsel, if any, regarding this Settlement Agreement and Order, and each enters into this Agreement voluntarily and with full knowledge of its legal consequences.
6. This Settlement Agreement and Order shall be governed by and interpreted according to the laws of the State of Tennessee.
7. Each of the undersigned representatives is fully authorized by the Party he or she represents to enter into the terms and conditions of this Settlement Agreement and Order and is authorized to legally bind such Party to this Agreement.
8. This Settlement Agreement and Order is contingent upon the approval of the requisite state official(s) as provided by Tenn. Code Ann. § 20-13-103. The effective date of this Settlement Agreement shall be the date it is approved and signed by both parties.

RESERVATION OF RIGHTS

In issuing this Settlement Agreement and Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this Settlement Agreement and Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE AND WAIVER OF RIGHT OF APPEAL

By entering into this Settlement Agreement and Order, the Respondent waives the statutory right under Tenn. Code Ann. § 68-215-119(b) to seek review of this Settlement Agreement and Order.

THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.

LEE OIL COMPANY, INC., RESPONDENT

[Signature]
SIGNATURE

4-9-20
DATE

By: Mitchell Co
Print Name

Title: Sec

STATE OF TENNESSEE)
COUNTY OF _____)

Before me, the undersigned authority of the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be _____ of Lee Oil Company, Inc., and who, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing his/her name in a representative capacity on behalf of Lee Oil Company, Inc.

Witness my hand and seal at office this the 9 day of March, 2020.

[Signature]
NOTARY PUBLIC

My Commission Expires: 02/15/23



THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.

TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION:

[Signature]
SIGNATURE

04-30-2020
DATE

By: Stanley R. Boyd
Print Name

Title: Director TDEC-UST

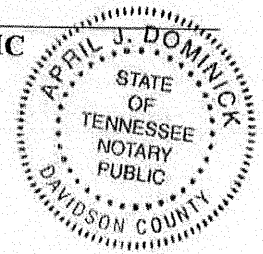
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned authority of the State and County aforesaid, personally appeared Stan R Boyd, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be _____ of the **TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION**, and who, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing his/her name in a representative capacity on behalf of the Department.

Witness my hand and seal at office this the 30th day of April, 2020.

[Signature]
NOTARY PUBLIC

My Commission Expires: 1-8-2024



AUTOMATIC ENFORCEMENT VIOLATIONS		
Violation	State Cite	Rule Section
Failure of tanks installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(a)1	UST Systems: Installation & Operation (Secondary Containment)
Failure to provide interstitial monitoring on tanks installed after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 27, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed after July 25, 2007 to be monitored for a release at least every thirty (30) days	0400-18-01-.02(2)(b)5	UST Systems: Installation & Operation (Secondary Containment)
Failure to install any spill prevention system.	0400-18-01-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overflow prevention system.	0400-18-01-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal tanks.	0400-18-01-.02(4)(a)	UST Systems: Installation & Operation
Failure to permanently close a lined tank where CP was not added by the December 22, 2012 deadline.	0400-18-01-.02(4)(a)3(v)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	0400-18-01-.02(4)(b)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	0400-18-01-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	0400-18-01-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	0400-18-01-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	0400-18-01-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	0400-18-01-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	0400-18-01-.04(2)(b)1(i)	Release Detection (Pressurized Piping)
Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping.	0400-18-01-.04(2)(b)1(ii)	Release Detection (Pressurized Piping)
Failure to comply with general remedial requirements	0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
Division not notified of tank closure.	0400-18-01-.07(4)(a)1-2	Out-of-Service UST Systems and Closure
Failure to conduct system closure sampling.	0400-18-01-.07(5)(a)-(b)	Out-of-Service UST Systems and Closure
Failure to register an underground storage tank in accordance with the statute.	Tenn. Code Ann. § 68-215-106(a)	Tennessee Code Annotated
Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	Tenn. Code Ann. §§ 68-215-106(c) and (e) 0400-18-01-.10(6)(a)	Fee Collection
Illegal Red Tag Removal	Tenn. Code Ann. § 68-215-106(c)-(d)	Tennessee Code Annotated